

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LIBERTY MUTUAL INSURANCE)	
COMPANY AND SUBSIDIARIES,)	
)	Civil No. 1:05-11048-RCL
Plaintiff,)	
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

LIBERTY MUTUAL FIRE INSURANCE)	
COMPANY AND SUBSIDIARIES,)	
)	Civil No. 1:05-11049-RCL
Plaintiff,)	
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**Protective Request (If Needed) that Court Enlarge Time to
File Rule 72 Objection**

The United States computes its deadline for objecting to the report and recommendation entered on July 27, 2007, as falling on Monday, August 13, 2007, but files this protective motion for a one-day enlargement in the event that the Court would disagree and compute the deadline as today, Friday, August 10. Under Fed.R.Civ.P. 72, objections seeking reconsideration by a district judge are due within 10 business days of “being served” with a report and recommendation by a magistrate judge. Under Rule 6(e), three days are added for service other than by personal delivery. Under the rules, electronic service, including ECF notification of

filing, is treated the same as mail service and three days are added. Lerro v. Quaker Oats Co., 84 F.3d 239, 241-42 (7th Cir. 1996) (Rule 6(e) applies to Rule 72).

Under Rule 3(b) of this Court's Magistrate Rules, objections are said to be due within three days of "receipt" of a report and recommendation. But the United States does not construe that rule as modifying the time set in Fed.R.Civ.P. 72 because the local Magistrate's Rule explicitly states that it is simply implementing the time requirement in Rule 72. Thus "receipt" appears to be referring to receipt of *service* and not preclude application of Fed.R.Civ.P. 6(f).

On the other hand, this Court's local rules for responding to motions states that it is intended to modify Fed.R.Civ.P. 6(e) by allowing fourteen calendar days that is to be construed as already included the additional time in Rule 6(e). L.Civ.R. 3(d). That motion/response rule, however, is clearly not applicable to an objection to a report and recommendation of a magistrate judge. And, without a clear and unambiguous statement of intent to vary a Federal Rule of Civil Procedure, the United States maintains that those rules cannot be modified (assuming it is otherwise permissible to adopt a wholesale variation).

Accordingly, the United States maintains that Monday, August 13, is the deadline. To the extent the Court might disagree, the United States requests an enlargement by one business day so that Monday will be the deadline. Counsel for the United States has been working

diligently on an objection and has been unable to complete one.

Due to time constraints, United States did not have time to solicit Plaintiffs' agreement to this request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). There are no non-registered case participants.

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